FILE COPY

FILED
NOV 5 19[illegible]
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

No. 494

PURITAN CHURCH BUILDING FUND, HARRISON PARKER and EDITH S. PARKER, Trustees, *Petitioners*,

v.

UNITED STATES OF AMERICA, ET AL., *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PURITAN CHURCH BUILDING FUND,
REV. HARRISON PARKER,
EDITH S. PARKER,
Trustees, Pro Se.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutory Provisions and Federal Rules of Civil Procedure	2
Statement	3
Reasons for Granting the Writ	19
Conclusion	21

Citations

American Fire & Casualty Co. v. Finn, 341 U.S. 6	17
Beamsley v. Commissioner Internal Revenue, 205 F. 2d 743-750	8
Clifton City Bank v. Commissioner Internal Revenue, 6 B.T.A. 643, 646	17
Connas, Inc. v. Commissioner Internal Revenue, 23 T.C. 8	17
Covel v. Heyman, 111 U.S. 176	16
Farmer Loan & Trust Co. v. Lake St. Elevated, etc., 177 U.S. 51	16
Gillis et al. v. Keystone, 6 Cir., 172 F. 2d 826	17
Kimbrough et al. v. Parker et al., 344 Ill. App. 483 101 N.E. 2d 617	App. 2
Kolb v. Feverstein, 308 U.S. 433	19
Kline v. Burke, etc., 260 U.S. 226	17
Martin v. Chandis Securities Co., 128 F. 2d 731, 735	7
McGrath v. Kerstein, 340 U.S. 162, 167	19
Napoli, etc. v. Commissioner Internal Revenue, 1 T.C. 8	16
Old Colony, etc. v. Comm., 297 U.S. 716	17
Palmer v. Texas, 212 U.S. 118	16
Perry v. Harper (1957), 307 P. 2d 168 (Okla.)	16
Prince Linda v. Thompson, 305 U.S. 456	16
Puritan Church, etc. v. Comm., 209 F. 2d 306	15
The Peale Phipps (1852), 55 U.S. 368	16
U. S. v. Bank of New York, 296 U.S. 463	16
U. S. v. Corrick, 298 U.S. 435, 440	19
U. S. v. Griffin, 303 U.S. 226	19

Other

10 Tax Court Memorandum 485	25

IN THE

Supreme Court of the United States

No.

PURITAN CHURCH BUILDING FUND, HARRISON PARKER and EDITH S. PARKER, Trustees, *Petitioner,*

v.

UNITED STATES OF AMERICA, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

I.

OPINION BELOW

The per curiam opinion of the United States Court of Appeals for the District of Columbia Circuit (Appendix *infra*, p. 15) is not yet, officially reported.

II.

JURISDICTION

The judgment of the Court of Appeals was entered on June 12, 1958. The time to petition to this court for

writ of certiorari was enlarged by order of this court dated October 7, 1958 to and including November 9, 1958. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254.

III.

QUESTIONS PRESENTED

—1—

Has the Commissioner of Internal Revenue authority from the Congress of the United States to cancel the right to income tax exemption vested in a religious organization which meets all the requirements of Section 101(6) of the 1939 Internal Revenue Code (Section 6871 of the 1954 Code), has met all the requirements of the Commissioner's "Enforcement Regulations" and all the requirements of the Internal Revenue Code for income tax exemption?

—2—

Has the Tax Court of the United States the jurisdiction to accept a tax litigant's petition for an income tax redetermination, after a receiver has been appointed for the funds of the tax litigant?

IV.

CONSTITUTIONAL PROVISION, STATUTORY PROVISIONS AND FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

7th Amendment

26 U.S.C.A. 501(c) (3)
26 U.S.C.A. 6901
26 U.S.C.A. 6871
26 U.S.C.A. 61

Rule 15 and 56 of the Federal Rules of Civil Procedure.

STATEMENT

—1—

For reasons of its own, the Congress of the United States expressed its will—in the 1939 Internal Revenue Code, as follows:

"Sec. 101 Exemptions from tax on corporations.

The following organizations shall be exempt from taxation under this chapter:

(c) Corporations and any community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc., no part of which inures to the benefit of any private share holder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise to influence legislation."

Elsewhere in that Code, the Commissioner of Internal Revenue is authorized by the Congress, to make "Enforcement Regulations" to carry out the will of the Congress. To enforce means to execute the law as it is enacted by the Congress: collect taxes where the Congress directs; exempt from taxation where the Congress directs: "shall be exempt" are the positive and unequivocal words of the Congress of the United States in Sec. 101 of the 1939 Internal Revenue Code.

Nowhere in the Internal Revenue Code, nor any where else, is there any authority to the Commissioner to either modify or cancel by "Enforcement Regulations," by assessment or otherwise the income tax exemption granted to religious organizations by the

Congress, by its Section 101(6) of the 1939 Internal Revenue Code.

In its decision dated September 28, 1951, at pages 952 and 957 of the Tax Court record in case numbered 25701, the Tax Court found:

> "Petitioner (meaning the Puritan Church—the Church of America) is a corporation organized under the laws of the State of Illinois. (957) The object of the organization as stated in the by-laws adopted August 17, 1947, is as follows:
>
> 'This organization was founded as a means of disseminating through the U. S. Mails and otherwise, the revelations of God vouchsafed to its members, on religious, educational, political, benevolent, fraternal, charitable and reformatory subjects, the study of which will cause in the individuals who practice them, a mental development. along scientific lines.
>
> In addition to promoting the above idea, the objects of this society, are to promote unqualified allegiance to the general government, protect the rights and liberties of American citizenship, and maintain national honor, union, and independance.'" (957).

CLAUDE H. HILL was called as a witess by and on behalf of the respondent, and, having been first duly sworn was examined and testified as follows:

> "I am an auditor in charge of the corporation section office of the Collector of Internal Revenue, First District of Illinois—(tr page 225); I have examined its records and found that the Puritan Church—the Church of America, filed with the Collector of Internal Revenue at Chicago, on April 19, 1950, the income tax exemption certificate in complete accordance with the form required by our department" (tr pages 227-228).

The "income tax exemption certificate" referred to in this uncontradicted and undisputed testimony, was a statement under oath, by the trustees of the Puritan Church—the Church of America that it:—

1—was organized—for the purposes named by Congress in Section 101 (6) of the 1939 Internal Revenue Code;

2—that no part of its income inured to the benefit of any private shareholder or individual;

3—that no substantial part of its activities is carrying on propaganda or otherwise influencing legislation.

JOHN W. BURNS was called as a witness by and on behalf of the respondent, and having been first duly sworn was examined--and testified as follows:

"I am the Internal Revenue Agent who investigated this case (the Puritan Church—the Church of America) (tr page 181); I had access to the bank statement of the Puritan Church—the Church of America (tr 194); it showed for the period under investigation, deposits in its bank at Montague, Michigan and at currency exchanges as follows:

$6,500 for period October 14, 1945 to December 1, 1945.

$47,013.54 for the calendar year 1946 (tr page 182);

$201,502.77 for the calendar year of 1947.

$359,094.03 for the period from January 1, 1948 to June 30, 1948: (tr 182, 183, 184)

I used the sum total of these deposits as my adjusted income for the Puritan Church and the deficiency notice in this case (tr 183); yes, the

same bank statement showed steady withdrawals (tr 194); I went to Mr. Looby, assistant U.S.A. Attorney and asked him if he had information about these withdrawals; he had none (tr 198); I could not obtain from Mr. Looby the evidence on which I could allow any deductions from my gross bank deposits assessment (tr 190); in making the jeopardy assessment I was guided by the transfer of approximately $150,000 from the special account at the Montague Bank to the Cos Cob Branch of the Greenwich Trust Company into the account of the Puritan Church Building Fund (tr 204); I had to rely on the gross bank deposits of the Puritan Church for the figures used in my adjusted income and deficiency notice in this case: (tr 189); No I did not ask the bank, if it had any records to show what the withdrawal items on the bank statement were used for (tr 195); the bank does not have access to the cancelled checks; they are the property of the individual (tr 195) (in this case the cancelled checks were the property of the Puritan Church—the Church of America); yes I knew where the office of the Puritan Church was at. La Grange, Ill. (tr 191); I never went there to make any requests for records: (tr 199) I concluded that there would be no point in making a demand for books and records of the Puritan Church (tr 190); for income tax purposes, I could accept the deposit items on the Puritan's Church's bank statement and reject the withdrawal items on the same statement; this I did (tr 189): my job, as I understand it, is to protect the revenue of the government; it is my duty to do so (tr 185)".

By this uncontradicted and undisputed testimony of the agent of the Commissioner of Internal Revenue of the U.S.A., Section 3615 of the 1939 Internal Revenue Code was violated by the Commissioner's agent—, in order to enable the Commissioner to cancel and annul

the income tax exemption granted to the Puritan Church, and tax it with an income tax which would not have been possible had the following law passed by the Congress been observed by the agent of the Commissioner:

(e) *Enforcement.*—Whenever any person summoned under this section neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience. (Section 3615, 1939 Internal Revenue Code.)

In *Martin* v. *Chandis Securities Company,* 128 F. 2d 731, 735, the Court said:

> "The rights of an internal revenue agent—to require production of books and records are statutory, and in order to obtain the relief granted by this section and section 3614 of this title, he must bring himself within the terms thereof."

In *Beamsley* v. *Commissioner Internal Revenue,* 205 F. 2d 743-750, the Court said:

> "A study of the record furnishes no reason why the testimony of these witnesses should be cast aside and the case decided upon mere speculation and conjecture."

Upon the first demand ever made by the Commissioner of Internal Revenue to view the books and records of the Puritan Church, all were delivered to the Tax Court in answer to a subœna duces tecum and handed to John W. Burns, while he was on the witness stand. All those books and records were in the undisturbed possession of Mr. Burns and W. A. Schwertfeger, special attorney for the Commissioner, from the close of court on Friday, until the opening of court on the following Monday.

JOHN W. BURNS was called to the stand for further direct examination by the respondent:

"I examined such books and records as the petitioner turned over to me in the court room Friday last (tr. 467); there were books of original entry (tr. 468); detailed ledger sheets; all ledgers in bound form (tr. 469); detailed ledgers for summary purposes (tr. 471); summary sheets for their purpose were bound in ledgers (tr. 470); there were little summary sheets which appeared to be income (tr. 471); miscellaneous papers (tr. 470); pay roll for building funds and other captions (tr. 471); from the books (of the Puritan Church) which are here in the court room I could, if I had sufficient time (tr. 790), make an audit of the Puritan Church from December 1945 to April 7, 1947 (tr. 792)."

When Mr. Burns on the witness stand, made the above confession, he had in his hands the original signed audit in the form of the copy below:

Audit of Puritan Church. Ending 12/31/46

STATEMENT OF INCOME PURITAN CHURCH, 1946.

Month	Account 1.	Account 2.	Account 3.	Christmas Donation
January	$ 418.49	$	$ 35.00	$
February	413.02		183.75	
March	563.76	9.00	308.05	
April	203.55	28.50	277.25	
May	538.10	1.00	332.05	
June	300.65	66.60	405.80	
July	634.90	49.00	569.35	
August	1017.14	252.60	726.05	
September	1147.67	37.55	1020.56	
October	1039.39	125.00	1103.59	
November	760.30	919.60	1436.82	
December	409.78	466.05	1323.93	$ 216.88
TOTALS	$ 7446.75	$ 1954.90	$ 7722.20	$ 216.88

Account 1. Receipts from Advertising—Newspapers Etc.
Account 2. Receipts from Direct Mail.
Account 3. Receipts from Incóme from Lessons.
Account 4. Christmas Donations

STATEMENT OF EXPENDITURES, 1945-1946.

Month	Account 1.	Account 2.	Account 3.	Account 4.
1945	$ 2191.88	$	$ 571.39	$ 512.51
January	1504.47		746.37	493.51
February	2090.72	581.12	1232.63	556.66
March	881.67	856.83	1279.20	1478.36
April	1577.39	39.00	525.65	1103.03
May	265.43	109.88	213.54	1478.36
June	374.86	229.49	602.40	2462.28
July	429.55	586.15	537.86	783.75
August	3229.41	615.51	1743.35	862.34
September	1319.99	708.21	456.11	588.45
October	2398.12	1164.47	1298.79	627.18
November	3188.45	2483.87	1068.78	1275.71
December	2477.27	628.16	395.38	1009.71
TOTALS	$21929.21	$ 8001.69	$10671.45	$13185.07

Account 1. Expenses of Advertising, printing, etc.
Account 2. Expenses of Direct Mail, printing, etc.
Account 3. Expenses of Less[illegible]s.
Account 4. Expenses of overhead, etc.

RECAPITULATION OF THE PURITAN CHURCH

Income and Expenditures Ending Dec. 31, 1946.

Income from account 1.	$ 7446.75
Income from account 2.	$ 1954.90
Income from account 3.	$ 7722.20
Income from account 4.	$ 216.88
*Advances made to the Puritan Church.	$37500.00
TOTAL	$54840.73
Expenditures of Acc't 1.	$21929.21
Expenditures of Acc't 2.	$ 8001.69
Expenditures of Acc't 3.	$10671.45
Expenditures of Acc't 4.	$13185.07
TOTAL	$53787.42

Balance of cash on hand and in the bank 12/31/46. $1053.31

*The monies advanced by individuals are secured by notes. These notes are signed by members of the Board of Trustees of said Church.

Submitted by:
Russell's Accounting & Tax Service.
C. ROBERT RUSSELL
C. Robert Russell

This audit had in it all the information which Mr. Burns had been seeking from everybody, except from the Puritan Church, where it was awaiting the call of any law upholding agent of the government of the U.S.A. (tr 137).

Sec. 3611 of the 1939 Internal Revenue Code:

> "In case no annual list or return has been rendered by such person to the collector or deputy collector as required by law * * * it shall be the duty of such collector or deputy collector to leave at such place of residence or business * * * a note or memorandum addressed to such person requiring him or her to render to such collector or deputy collector the list or return requnred by law" * * *
>
> (A) If any person fails to make and file a return or list at the time prescribed by law * * * the collector or deputy collector shall make the return orlist from his own knowledge and from such information as he can obtain through testimony or otherwise."

When Mr. Burns had in his hands, the certified audit of the Puritan Church, he had in his possession "such information as he can obtain through testimony or otherwise" demanded by the Congress in Section 3611(A) of the 1939 Internal Revenue Code noted above. When he did not use it to modify "from his own knowledge" his previous "100% gross bank deposit" assessment he voided his income tak assessment against an income tax exempt religious organization, voided the following decision of the Tax Court and voided all the 8 years of litigation in which the Commissioner has engaged in an attempt to retain in the U. S. Treasury, the money obtained by Mr. Burns' void assessment:

"Now, therefore, it is

ORDERED and DECIDED: That there are deficiencies in income tax and penalties as follows:

Year	*Deficiency*	*25% Penalty*	*50% Penalty.*
Period Oct. 14, 1945 to Dec. 31, 1945	$ 550.00	$ 137.50	$ 275.00
1946	4,284.95	1,071.24	2,142.48

all of which amounts have been paid by the Puritan Chaurch Building Fund, transferee; that for the calendar year 1947 there are deficiencies in income tax and penalties as follows:

Deficiency	*25% Penalty*	*50% Penalty*
$24,039.27	$6,009.82	$12,019.64

(SIGNED) LUTHER A. JOHNSON
Judge

ENTER:

Entered Sep 28 1951

Served Sep 28 1951

(SEAL)"

In addition to assessing against the Puritan Church an income tax which would not have been legal against a bawdy house whose books and records were always open and available to the Commissioner, the Tax Court in its decision:

(a) Validated the Commissioner's cancellation of the income tax exemption of the Puritan Church which had been annulled by the Commissioner's agent John W. Burns, without a notice, without a hearing and without a trial in a court, where the Churchs' rights could have been defended by the established rules of evidence. (Mr. Burns could not have made his $326,000. income tax assessment against the Puritan Church had he not arbitrarily and capriciously divested that Church of its right to income tax exemption);

(b) upheld the Commissioner's invasion of a religious purpose trust fund in the Greenwich Trust Company, with a "jeopardy assessment," and his seizure there of $106.000. in cash, which had been deposited in the U. S. Treasury two years before the Tax Court determined that the burden of the evidence was not upon the Commissioner to prove fraud for his issue of a "Jeopardy Assessment" to a transferee;

(c) upheld the Commissioner's seizure of the $35,000. free and clear site for a Puritan Meeting House owned in fee simple by the Congregation of the Puritain Church of Washington. D. C., as a $17,500. payment on the $326,000 income tax liability assessed against the Puritan Church—the Church of America, at La Grange. Ill. by the Commissioner;

(d) assumed the power of an equity court and extended the jurisdiction of the Tax Court into the exclusive jurisdiction of those courts, without any authority either from the Congress, or in the Act creating the Tax Court;

(e) determined that the Puritan Church—the Church of America, and the Puritan Church Building Fund, a trust organized under the common law specifically to distribute Bibles free and build a Puritan Meeting House, were one and the same legal entity, subject to income taxes under the provision of Section 101(6) of the 1939 Internal Revenue Code, for failure to meet the requirements of this Section for income tax exemption;

(f) determined that all the money in the Greenwich Trust Company credited to the account of the Puritan Church Building Fund ("earmarked" for distributing Bibles free, and building a Puritan Church), was an asset of the Puritan Church—the Church of America;

(g) determined that all the money in the Greenwich Trust Company credited to the account of the Puritan Church Building Fund could be used as the "down payment" on the $326,000 income tax assessment which had been assessed by the Commissioner of Internal Revenue, against the income tax exempt Puritan Church;

(h) found without a scintilla of evidence in the Court record to sustain the "Findings," that thePuritan Church Building Fund was a transferee of the Puritan Church—the Church of

America which owed $326,000 in income taxes according to the computation of John W. Burns;

(i) found at pages 956 and 957 of the Tax Court record that the Puritan Church—the Church of America had met the requirements of the Congress for income for exemption, and at page 975 of the same court record, found that the Puritan Church—the Church of America "had not met the requirements of the Congress for income tax exemption;

(j) cruelly libeled the Puritan Church and made "Findings of Fact" for which there is not a scintilla of evidence in the Tax Court record, for example: at record pages 973 and 995 in its decision, the Tax Court found:

"Petitioner kept no adequate books nor adequate records."

At tr pages 24, 34 to 39, 45, 46, 137, 189 to 199, 139, 207, 220, 224, 266, 267, 307 to 309, 311, 356 to 359, 360, 451, 468 to 473, 583 to 585, 617 to 632, 673 to 692, 697 to 701, 727 to 729, 790, 791, 857, the testimony by witnesses for both the petitioner and the respondent is undisputed that

The petitioner did keep books and adequate records.

This confusing decision of the Tax Court on matters on which only an equity court has jurisdiction, was appealed for review to the United States Court of Appeals for the District of Columbia Circuit; that Court rid itself of this involved litigation with 37 words, to wit:

"The Tax Court made findings in great detail and rendered a careful opinion. Upon examination of the record we conclude that the findings are supported by ample substantial evidence. We find no error in any other respect."

Certiorari was denied by the Supreme Court of the United States. *Puritan Church of America* v. *Commissioner*, 93 U.S. App. D.C. 129, 209 F. 2d 306, cert. denied, 347 U.S. 975. See also 10 T.C.M. 485.

That decision by the Supreme Court of the United States armed the Commissioner with the defense of res judicata which has been used by him for eight years in the Courts of Washington, D. C., to thwart all efforts by the petitioner to have the seized $106,000 returned to the trust fund in the Greenwich Trust Company, and the building site for a Puritan Church at Washington, D. C., returned to its owner, the Puritan Church of Washington, D. C.

—2—

On November 4, 1949, the Hon. Elmer Snackenberg, Judge of the Circuit Court of Cook County, Illinois, appointed a Receiver for the Puritan Church—the Church of America upon a decree which had been written for him by Howard Ellis, lawyer, who was not a lawyer of record in any of this litigation: Ellis paid John W. Norkett, an employee of the law firm of Kirkland, Fleming, Green, Martin and Ellis to hire five mechanics to donate $75.00 in cash, to the Puritan Church and then sue for and obtain a Receiver in litigation which was conducted for Howard Ellis through all the Courts of Illinois, at an expense to the Chicago Tribune of over $100,000, to recover the $75. donated by Ellis' dummies." (See affidavit in file

320 Miscl. 1958 term of the Supreme Court of the United States)

On November 7, 1949, three days after a receiver for all the assets of the Puritan Church—the Church of America had been appointed, the Puritan Church Building Fund, the petitioner in this litigation, filed in the Tax Court, in case numbered 25701, its petition for a redetermination of the income tax assessment which had been made against it by the decision of the Tax Court. *Covel* v. *Heyman,* 111 U.S. 176; *Perry* v. *Harper* (1957), 307 P. 2nd 168 (Okla.).

For reasons best known to it the Congress enacted the provisions of Section 6871 of the 1954 Code. Indeed, Section 6871 is a re-enactment of Section 282 of the 1926 Internal Revenue Code and Section 274 of the 1939 Code, as amended. Section 6871 bars the filing of a Petition for redetermination in the Tax Court after the appointment of a Receiver for the tax litigant.

The following cases hold that the mere filing of a suit for the appointment of a receiver gives to the court in which the proceeding was filed, constructive possession of all assets mentioned in the proceeding, irrespective of the location of said assets: *The Peale Phelps,* (1852), 55 U.S. 368, *Farmers Loan & Trust Co.* v. *Lake St. Elevated Ry. Co.,* (1900), 177 U.S. 51, *Prince Linda* v. *Thompson,* (1939), 305 U.S. 456, *Palmer* v. *Texas,* (1909), 212 U.S. 118; and *U. S.* v. *Bank of New York,* (1936), 296 U.S. 463.

The Tax Court itself has decided that it has no further jurisdiction to make a redetermination where there has been the appointment of a receiver for the tax litigant or an adjudication in bankruptcy. *Di*

Napoli, etc. v. *C. I. R.*, 1 T.C. 8. See also *Connas* v. *C. I. R.*, (1954), 23 T.C. 8, and *Old Colony Trust Co.* v. *Comm.*, 279 U.S. 716.

The courts have held that as between two courts who have concurrent jurisdiction, the court first acquiring jurisdiction over the "res" involved, may exercise that jurisdiction to the exclusion of the other court until its duty is fully performed and its jurisdiction is exhausted. *American Fire and Casualty Co.* v. *Finn*, 341 U.S. 6, 71 S. Ct. 534; *Gillis et al* v. *Keystone Mutual Casualty Co.*, 6 Cir., 172 F. 2d 826; *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 43 S. Ct. 79; *Covel* v. *Heyman, supra*, and *Perry* v. *Harper, supra*

Section 6871 of the 1954 code, empowers the receiver appointed by the Circuit Court of Cook County for the Puritan Church, to pass upon any claim that the respondent may have had against the petitioner. The following decisions support the position of petitioner in this respect: *Connas, Inc.* v. *C.I.R.*, (1954), 23 T.C. 8, *Old Colony Trust Co.* v. *Comm.*, 279 U.S. 716, 728 and *Clifton City Bank* v. *C.I.R.* (1927), 6 B.T.A. 653, 646.

Thereafter, petitioner sued in the U. S. District Court at Washington, D. C., for the recovery of taxes wrongfully exacted. (App.); thereafter respondent filed its Motion for Summary Judgment. Prior to the hearing on said motion, petitioner filed its motion to amend its complaint by adding thereto two new counts. (App.):

Count two of said proffered amended complaint alleged in substance: (1) jurisdiction, (2) the filing of the 6 months notice in compliance with Section 7422 of the 1954 Code, (3) that the judgment of the

tax court entered September 28, 1951, was void ab initio, as an invasion of Section 6871 of the 1954 Code, (4) that the tax was levied on a void assessment, and (5) a demand for the return of $89,000.00 wrongfully exacted, together with statutory interest.

Count three of the proffered amended complaint alleges in substance, that: (1) The timely filing of claim for refund, (2) the lack of jurisdiction in the tax court over the subject-matter, as an abridgement of the provisions of Section 6871 of the 1954 Code, and (3) demanded judgment for $17,059.09.

The District Court rejected petitioner's motion to amend, and upheld the respondent's defense of res judicata in the Tax Court, by its decision dated September 28, 1951 referred to on pages 13 and 14 hereof.

The United States Court of Appeals for the District of Columbia Circuit, affirmed the action of the District Court, and rid itself of all the undecided law points in this litigation with 13 words, to wit:

> "Per Curiam: The District Court rightly dismissed this action on the ground of res judicata. *Puritan Church of America* v. *Commissioner*, App. Infra. p. 15.

This petition for certiorari is an appeal to the Supreme Court of the United States to bring cosmos out of the chaos created by this opinion of the Court of Appeals, by answering with the law, the two short questions propounded by the petitioner on page 2 of this petition. Both questions were squarely before the U. S. Court of Appeals of the District of Columbia Circuit for answer. For reasons of its own, it

avoided answers and attempted to settle this important litigation with:

> "Per Curiam: The District Court rightly dismissed this action on grounds of res judicata."

The decisions of the lower courts were based upon the doctrine of "res judicata"; neither decision was explicated. There is nothing to be gleaned therefrom, other than the bare conclusion of "res judicata". If the Tax Court had no jurisdiction over the subject matter, the doctrine of "res jurisdiction" is inapplicable: judgment rendered by a court without jurisdiction of the subject matter is void and thereby subject to collateral attack in any court at any time, continues to receive the approval of the courts throughout the land.

This is true whether the jurisdictional question was or was not raised in the trial court and determined by the trial court at the time.

This Court has long since held that where the trial court is without jurisdiction of the subject matter, any judgment rendered by such court is void. *United States* v. *Corrick,* 298 U.S. 435, 440, *United States* v. *Griffin,* 303 U.S. 226, 229, *Kolb* v. *Fevertein,* 308 U.S. 433, and *McGrath* v. *Kristensen,* 340 U.S. 162, 167.

REASONS FOR THE GRANTING OF THE WRIT

(a) At pages 9 and 12 of this petition and in the archives of the Supreme Court of the United States, in file 320 Miscl. October term 1958 there is uncontradicted and undisputed evidence which shows that Howard Ellis, lawyer for Chicago hoodlums, wrote in their offices at 33 N. LaSalle St., Chicago, the decision

of the Tax Court—dated September 28, 1951, in Tax Court case numbered 25701 for the signature of Luther A. Johnson, Judge of the Tax Court, and for the signature of Elmer Snackenberg, Judge of the Circuit Court of Cook County, Illinois, the decree appointing a Receiver for the Puritan Church—the Church of America. (See affidavit in file 320 Miscl. October 1958 term of Supreme Court of the United States).

The courts of the United States are not sacrosanct; they are not free from criticism. When there is extant—as there is in this litigation, evidence which shows that corruption is gradually creeping into the most sacred institution of our government, the outcry of the decent persons of the United States, should be articulate and loud.

If for any reason, the Supreme Court of the United States shall choose not to review and reverse the lower courts for lack of jurisdiction in this litigation, those courts will be without a guardian; life, liberty, property, law and order in the United States will be without a protector.

Then, Howard Ellis lawyer will continue to sabotage the Puritan Church with his champertous litigation and jail for contempt of court, men and women ministers of the Puritan Church who have the vision to descry the ultimate consequences of disrespect to law; then the Peoria hoodlums will continue to dynamite the synogogue of the the Jew; "Specs" O'Keefe's Boston hoodlums will continue to silence their opposition with "Murder Inc"; Johnny Dios' New York City hoodlums will continue to use acid; Fay and Maloney's Philadelphis hoodlums will continue to use "stink bombs"; Frank Costello's "Mafia" hoodlums will continue to use arson and assassination and Johnny

Hoffa's nation-wide hoodlums will continue to use mutilation; then, the existing form of government of the United States of America will lapse into the limbo along with "the glories that once were Greece and Rome." (Should the Supreme Court of the United States determine to appoint a Commissioner to take testimony for the disbarment of hoodlums from the practice of their kind of law in the Courts of the Governments of the United States, the petitioner will deliver to him, irrefragable evidence in writing, on the office forms of the law firm of Kirkland, Fleming, Green, Martin and Ellis, over the signature of Ellis, to prove the above charge against Howard Ellis.)

(b) The jurisdiction of the Commissioner of Internal Revenue over income tax exempt religious organizations has not been defined by any court of competent jurisdiction. Until that jurisdiction shall be defined by this Court, all religious organizations in the United States are existing under the sufferance of a Commissioner's agent armed with a jeopardy assessment.

CONCLUSION

This Court should grant the writ of certiorari prayed for:

(1) the complaint and amended complaints were filed pursuant to Section 6512, 6532, and 7422 of the 1954 Code, and Rule 15 of the Federal Rules of Civil Procedure; their dismissal deprived the petitioner of trial by jury under the 7th Amendment to the Constitution of the United States;

(2) the Tax Court was without jurisdiction to determine the petitioner's redetermination, peti-

tion filed therein three days after the appointment of a receiver to take over its assets;

(3) the doctrine of res judicata, as applied by the Court of Appeals and District Court are inapplicable where the trial court was without jurisdiction of the subject matter;

(4) the Tax Court was without power to annul the right of income tax exemption which was vested in the Puritan Church of America, by the Congress of the U. S. A.

Respectfully submitted,

PURITAN CHURCH BUILDING FUND,

REV. HARRISON PARKER,
EDITH S. PARKER,
Trustees, Pro Se.